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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,556	02/08/2006	Andrzej Krysztof	POL0011-US	9221

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PAUL, HASTINGS, JANOFSKY & WALKER LLP  
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Washington, DC 20005

EXAMINER
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PHILLIPS, FORREST M

ART UNIT	PAPER NUMBER
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2837

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01/15/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	Application No. 10/567,556	Applicant(s) KRYSZTOF, ANDRZEJ	
	Examiner Forrest M. Phillips	Art Unit 2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/8/06</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the identifying ring comprising at least two members must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

Claim3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 3 recites the broad recitation fastening element, and the claim also recites "preferably a thread, catch or recess" which is the narrower statement of the range/limitation.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,5- 7, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tseng (US6847720) in view of antiquemed.com/20<sup>th</sup>\_century.htm (herein after antique med).

With respect to claim 1 Tseng discloses (figure 4), a medical stethoscope head comprising:

A body (6 in figure 4); an inlet pipe (67 in figure 4) extending from said body and having an axis; a diaphragm cup (7 in figure 4) having an upper surface and a lower surface opposite to said upper surface; a diaphragm (8 in figure 4) held at said lower surface of said diaphragm cup by a fastening ring (9 in figure 4), a means (20 in figure 4) for personalizing and identifying a stethoscope, having an upper and a lower surface.

Tseng does not disclose wherein the means is a ring in a defined angular position in relation to said axis of said inlet pipe.

Antique med discloses (see page 5 and expanded view of photo) a stethoscope having a diaphragm and an identifying ring incorporated on the top surface of the diaphragm cup.

At the time of the invention it would have been obvious to one of ordinary skill in the art to combine the teachings of placing information on a ring atop the diaphragm cup as taught by antique med with the quick changing identifying means of the Tseng stethoscope, to provide a means of locating the identification in such a way as to be readily available.

Orienting the information at a specific angle with respect to the axis of the pipe would have been obvious to allow for ease of reading during use of the stethoscope.

Further, with regard to the placement of the information it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

Further it has been held that matter relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art In re Seid, 161 F.2d 229, 73 USPQ 431 (CCPA 1947).

With respect to claim 6 the identifying ring of Tseng as modified is necessarily made of at least one material.

With respect to claim 7 Tseng as modified further discloses wherein the fastening ring is elastic (Column 3 lines 1-5). It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the identifying ring and the fastening ring as one piece for the sake of simplification, further, it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. Howard v Detroit Stove Works, 150 US 164 (1893).

With respect to claims 5 and 11 Tseng as modified discloses the claimed invention except for characterized in that it comprises at least two members. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the ring in two or more members, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. Nerwin v. Erlichman, 168 USPQ 177, 179.

Claims 2-20 rejected under 35 U.S.C. 103(a) as being unpatentable over Tseng in view of antique med as applied to claim 1 above, and further in view of Scribner (US3621206).

With respect to claims 2, 8, 14 and 18 Tseng as modified discloses the invention as claimed except at least one locating element being adopted for cooperating with means provided on said diaphragm cup for explicitly locating said identifying-personalizing ring in defined angular position in relation to said axis of said inlet pipe.

Scribner discloses a locating element for angular position of a label (abstract and figures).

At the time of the invention it would have been obvious to one of ordinary skill in the art to combine the teachings of Scribner to angularly align a label with the identifying ring of Tseng as modified to simplify the identification process.

With respect to claims 3 and 9 Scribner further discloses wherein the identifying element (100 in figure 1) is provided with a fastening element, preferably a thread catch or recess (128 in figure 1) for removably securing the identifying element.

With respect to claim 4 Tseng as modified discloses the invention as claimed except the fastening element being a threaded connector. Threaded connectors are known in the art. The use of a threaded connector in place of a pin and slot arrangement would have been obvious to one of ordinary skill in the art to more securely fasten the components together. With regard to angular locating, a pin and slot would be functionally equivalent to a threaded connection.

With respect to claim 10 Tseng as modified further discloses wherein a fastening element (as demonstrated by Scribner) which is in the form of a hole for placing a screw or pin is placed on said lower surface of said ring. Refer to figure 1 of Scribner. Placing at least on the lower surface would have been obvious to one of ordinary skill in the art to allow the components to mate.

With respect to claim 12 the ring of Tseng as modified is necessarily made of at least one material.

With respect to claim 13 With respect to claim 7 Tseng as modified further discloses wherein the fastening ring is elastic (paragraph 16). It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the identifying ring and the fastening ring as one piece for the sake of simplification, further, it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v Detroit Stove Works*, 150 US 164 (1893).

With respect to claims 15 and 19 Tseng as modified provides decorative elements or any other techniques for identification, namely text.

With respect to claim 16 examiner considers that the ring of Tseng as modified necessarily has an upper, lower and outer surface, and the lower surface is on the upper surface of the diaphragm cup, and that the ring is in a defined angular position as taught by Scribner, (refer to rejection of claim 1 and claim 2).



With respect to claim 17 Scribner further discloses wherein the locating-connecting means is selected from a screw joint, pin joint, bayonet joint and snap joint (pin joint shown in figure 1).

With respect to claim 20 Tseng demonstrates an annular recess (refer to figure 1, see where element number 3 is indicated, though 3 is the disc itself there is shown a recess) this being the position of the indicia on the stethoscope as taught by antique med.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Forrest M. Phillips whose telephone number is 5712729020. The examiner can normally be reached on Monday through Friday 8:30-5:00.

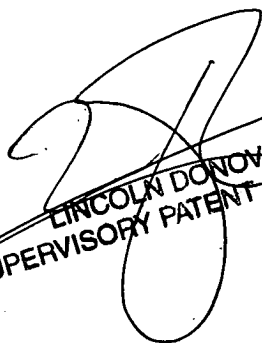
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on 5712721988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

FP.

  
LINCOLN DONOVAN  
SUPERVISORY PATENT EXAMINER